



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.*,)
OKLAHOMA BAR ASSOCIATION,)
Complainant,)
v.)
ISAAC SETH BRANTLEY SHIELDS,)
Respondent.)

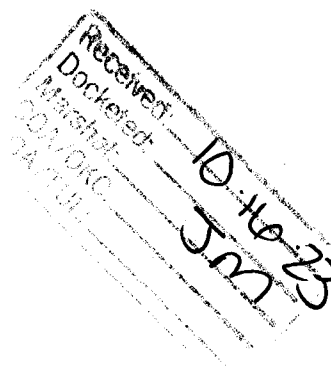
RULE 6, RGDP
SCBD NO. 7480
FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
OCT 16 2023
JOHN D. HADDEN
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**REPORT AND RECOMMENDATION OF THE PROFESSIONAL
RESPONSIBILITY TRIBUNAL**

Appearances:

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The Professional Responsibility Tribunal ("PRT") convened on August 17-18, 2023 and September 8, 2023, for hearings pursuant to Rule 6 of the Rules Governing Disciplinary Proceedings, Okla. Stat. Tit. 5 O.S. 2011, Ch. 1, App. 1-a ("RGDP"). The following members served as the PRT's Trial Panel: Malinda S. Matlock, Presiding Master; Jennifer Irish, Lawyer Member; Susan Regier, Lay Member.

The purpose of these proceedings is to make a record of the evidence presented to allow the Supreme Court for the State of Oklahoma to consider whether Respondent, Isaac Seth Brantley Shields (“Respondent”) has engaged in acts which constitute professional misconduct in violation of the Oklahoma Rules of Professional Conduct (“ORPC”), 5 O.S. 2021, Ch. 1, App 3-A, and the RGDP, Okla. Stat. Tit. 5 O.S. 2011, Ch. 1, App. 1-A.

If such acts are proven by clear and convincing evidence, then the second inquiry concerns whether there is any mitigating evidence which may impact the appropriate level of discipline that should ultimately be imposed upon Respondent.

On June 2, 2023, the Supreme Court Ordered the PRT to conduct a joint hearing for this Complaint and the Complaint SCBD No. 7481 in consideration of the interest of judicial economy pursuant to a Motion by the OBA and agreement by both Respondents. A joint record of these proceedings will be filed in Case No. 7480 and cross referenced for consideration of both cases. The PRT is filing a separate Report and Recommendation for each case.

The Complaint and Answer

On April 20, 2023, the Complainant, the Oklahoma Bar Association (“OBA”) filed a Complaint against Isaac Seth Brantley Shields (“Respondent”) alleging misconduct that violates the Oklahoma Rules of Professional Conduct (ORPC) 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d)(conduct prejudicial to the administration of justice) and RGDP 1.3 (conduct bringing discredit upon the legal profession) and violation of 21 O.S. §588 which

would constitute a felony when Respondent knowingly and willfully observed jury deliberations via court room security cameras from the Security office at that Rogers County Courthouse on July 1, 2022.

In his Answer, Respondent denied that he committed acts which would constitute professional misconduct, and further challenged that he could be guilty of violating 21 O.S. §588 because he did not have criminal intent.

Evidence Presented

Exhibits:

OBA's Exhibits 1-20 admitted without objection.

Respondant's Exhibits 1-9 admitted without objection.

Witnesses:

- A. Brian Martin, OBA Investigator
- B. Joy Thorp, Esq. – First Assistant to the District Attorney, District 12.
- C. Sergeant Mike Clark – Rogers County Sheriff's Office, Supervisor, Courthouse Security
- D. Michael Moore – Rogers County Sheriff's Deputy - Courthouse Security
- E. Sheldon Morgan – Rogers County Sheriff's Deputy Court – Jailor
- F. Wayne Stinnett – Chief Investigator for 12th District DA's Office
- G. M.J. Denman, Esq. – Criminal defense attorney for Robert Kraft trial.
- H. Brian Boeheim, Esq. - Criminal Defense Attorney, Tulsa County
- I. Matt Ballard, Esq. – District Attorney for 12th District
- J. Mary Leavell, Esq. - Attorney – practiced with Respondent (character witness)

K. David Max Cook, Esq. – District Attorney for Creek County – current employer (character witness)

L. Cheyenne Lee – Former Co-worker in Rogers County Sheriff's Office (character witness)

M. Isaac Seth Brantley Shields, Esq. - Respondent

I. SUMMARY OF WITNESSES' TESTIMONY

A. Brian Martin, OBA Investigator

The OBA opened an investigation upon reports it received about (2) prosecutors in Rogers County observing jury deliberations at the end of a 5-day murder trial ("Kraft trial") that concluded on July 1, 2022¹. The first notice to the OBA of acts of potential professional misconduct were news media reports. Next, the OBA received a self-report by Respondent on July 13, 2022. And, subsequently, the judge presiding over the murder trial, Judge Pazzo, and the First Assistant District Attorney for Rogers County, Joy Thorp, also submitted grievances to the OBA.

The Kraft trial was a 1st degree murder trial that had been delayed multiple times for various reasons. At the end of the weeklong trial, the jury was sent out to deliberate around 3:00p on Friday, July 1, 2022. Judge Pazzo apparently instructed his bailiff to place the jurors in the empty courtroom next to his courtroom (Judge Nigh's courtroom). The Respondent does not recall the judge informing trial counsel of this. Counsel for defendant Kraft recalls Judge Pazzo telling counsel of his plan to

¹ The case on trial was State v. Kraft, CF-2018-465, Rogers County District Court.

use the adjacent courtroom for deliberations. This may have been the practice of Judge Pazzo since 2020 to allow jurors to spread out during deliberations rather than be sequestered in the jury deliberation room with relatively close quarters (estimated at 15' x 20') in consideration of COVID precautions.

The courtrooms in Rogers County have multiple video cameras that feed to monitors in the Security Office that is occupied by deputies of the Rogers County Sheriff's Office who provide courthouse security. The cameras in Judge Nigh's courtroom were described as almost "HD" (high definition) quality. The Security Office has restricted access only to those who have a key card. Respondent had been in the Security Office on a few occasions to answer questions or give advice to deputies on security issues. The Jury Deliberation Rooms do not have any video cameras. The courtroom has a doorway to the public hallway with a small glass window that allows persons in the hall to look into the courtroom.

The videos admitted into evidence are believed to cover from about 5:00pm until the jury reaches its verdict around 8:03pm². The time stamp on the video is believed to be off by an hour and depicts a time about an hour later than the actual time (i.e. time stamp of 18:02 is actually 17:02 [5.02pm]). The video shows that Respondent entered the Security Office at 18:03, escorted by Sgt. Clark who left to go

² The video shows the Respondent, ADA Gibbs, several deputy sheriffs and an investigator for the Sheriff's Office in the Security Office watching the jury deliberations at various times over about 3 hours between 5:00p and 8:00p. All were investigated for their role in the incident and charges were declined. None of the sheriffs' deputies were charged with violating 21 O.S. §588 nor were they presented with a Deferred Prosecution Agreement.

home within 2-3 minutes. Respondent was in/out of the Security Office watching the video monitor until the verdict was returned in open court at 8:03p.

According to OBA Investigator, Brian Martin, the video depicts Respondent watching jury deliberations, using the computer mouse to change cameras or zoom in/out on the jurors, leaving to meet with the judge re a juror question and discussing an re-enactment by the jurors of the stabbing over a total of 141 minutes between 5:04p and 7:52p. The jury's verdict was read in open court at approximately 8:03pm. The jury's verdict was guilty of first degree murder. Defendant Kraft was later sentenced to life imprisonment. There is a Motion for Mistrial pending. One of the grounds for mistrial asserted is the conduct of the prosecutors observing the jury during deliberations, meeting with the judge over questions sent out by the jury, being able to see jurors voting, and knowing that they were "about to hit G".

B. Joy Thorp - First Asst. DA –

Respondent was Chief of Criminal for District 12 and was ADA Gibbs' "boss". Thorp was present at the courthouse on Friday, July 1, 2022, until about 5:45p. When she left, ADA Gibbs was in the DA office's conference room, but Respondent was not in the office. At 6:33, Thorp texted with victim coordinator, Ms. Likes, "Anything?" to which Ms. Likes responded "Jury has just asked if there's a hung jury, can they retry it?" Thorp texted with Respondent/Gibbs about 7:30pm and he said "We are fine. Just waiting patiently. Annalise went to get pizza.". Neither Respondent nor ADA Gibbs mentioned the note or the potential for a hung jury. Thorp later learned the jury returned a guilty verdict and recommended life in prison.

The following Thursday, July 7, 2022, Judge Pazzo texted Thorp and Matt Ballard, DA, asking them to come to his chambers ASAP. They met with Judge Pazzo and Judge Russell (special district judge) and learned that one of the sheriff's deputies had gone to Judge Russell about his concerns that Respondent and ADA Gibbs had watched the jury deliberate from the Security Office. Ms. Thorp described that she, DA Ballard and both Judge Pazzo and Judge Russell were shocked and concerned. There was concern about the ethical issues as well as concern about the impact on the Kraft trial.

Thorp and Ballard immediately met with the DA's chief investigator, Wayne Stinett, to start an internal investigation and preserve any related video. DA Ballard, First Asst. Thorp and Investigator Stinnett interviewed the Respondent on Monday, July 11, 2022, his first day back from vacation. The Respondent readily admitted that he had watched the jury deliberate. He said that he did not communicate with jurors, hear their discussion or otherwise interfere with the jury's deliberations. He did not see any cause for concern or any ethical issue. He claimed that the reason he went into the Security Office was because Deputy Morgan had asked his advice on what to do about the defendant's family trying to get into the courtroom. Respondent estimated he was in the Security Office for about 30 minutes, when video of the room reveals that he was in the Security Office for over 2 hours.

When Ballard and Thorp showed him a copy of 21 O.S. §588, Respondent became noticeably concerned. Ballard and Thorp immediately suspended Respondent from his duties as ADA with pay pending the internal investigation. Ultimately, he was told that he would be terminated or that he could resign. He resigned. Thorp testified

that is was concerning to her that neither Respondent or ADA Gibbs thought watching jury deliberations was unethical or that they seemed to not understand how knowledge of jury deliberations could give them an unfair strategic advantage or prejudice an opposing side. Based upon the investigation, she does not believe that any strategic advantage or prejudice to the defendant actually occurred in this instance.

Thorp testified that everyone knows that jury deliberations are *sacrosanct*. Every attorney, whether first year or ten year attorney should know that jury deliberations are sacrosanct.

C. Sgt. Mike Clark

Sgt. Clark testified that he was about to leave around 5:00p. He ran into Respondent as Respondent was coming out of the elevator and engaged in small talk about how long the jury was taking. He could not recall specifics of how it came about, but he opened the door to the Security Office to allow Respondent access to the room. Clark left to go home about 2 minutes later. He denied that he and the Respondent had any conversation about defendant's family members trying to peak into the jury deliberations on the 4th floor. He does recall receiving a call later from Deputy Moore, who was on the 4th floor, about family members of the defendant looking through the door to the courtroom where the jurors were deliberating. A deputy resolved the issue by directing the family to wait on the 3rd floor of the courthouse.

He cannot recall any other instance in which ADAs ever entered the Security Office to watch jury deliberations in a courtroom.

D. Mike Moore, Sheriff's Deputy, Courthouse Security team

Deputy Mike Moore, recalls Sgt. Clark letting Respondent into the Security Office and that he asked Respondent: "Are you supposed to be in here?" Respondent answered, "Yes, I'm not interfering." While in the Security Office, Deputy Moore said that Respondent was observing the jury deliberations on the screen and Deputy Moore showed him how to zoom in/out with the computer mouse. He also observed Respondent and ADA Gibbs watching the monitors together while also discussing the juror's re-enactment of the crime.

The jurors could be seen moving about in the courtroom, holding their hands up, and taking votes. At one point, Respondent stood up and announced that the jury sent out a question and he went upstairs "to do whatever they do". When Respondent returned, he told he deputies in the Security Office that the question was if there was a mistrial would they be able to try the case again.

Deputy Moore got a call around 6:30-7:00 about the defendant's family trying to look in the courtroom where the jurors were deliberating. This was long after Sgt. Clark let Respondent into the Security Office. Deputy Moore went to the 4th floor and asked the family to move down to the 3rd floor to wait for the jury.

At the end of the evening, Respondent said "There's a verdict" and jumped up to head out of the Security Office. He did not say if he knew what the verdict was.

Deputy Michael Moore thought it was "weird" for the ADA's to be in the Security Office watching jury deliberations because it had never happened before. He saw nothing to indicate that Respondent interfered with jury deliberations in any way.

E. Deputy Sheldon Moore

Deputy Sheldon Moore is the one that reported his concerns to Judge Russell the week after the trial.

Deputy Sheldon Moore has worked with the Rogers County Sheriff's Office since 2019 and was working in the Court Guard division in July 2022. He was tasked with escorting the defendant between the jail and the courtroom during the trial. While the jury was deliberating, he was awaiting the verdict in the Security Office so he could then escort the defendant back to the courtroom for the verdict to be read in open court.

Deputy Sheldon Moore recalls when Respondent first entered the Security Office, that Deputy Mike Moore asked "What the F are you doing here?" or "Are you even allowed to be here?" He does not recall Respondent's response.

While in the Security Office, he observed Respondent watching the jury and watching the voting by the jury. Deputy Sheldon Moore testified that the video showed jurors writing on a piece of paper, shaking their head yes or no, and even one juror sitting and spinning in the judge's chair. He said "We could observe everything."

Respondent left the Security Office after they saw a juror write a question on a piece of paper and take it to the chamber's door. When he returned, Respondent told the room that there was a question about possibility of a hung jury. According to Deputy Sheldon Moore, Respondent told the group in the Security Office that he

asked the judge to have the jurors continue to deliberate for awhile longer because he thought they were close.

Deputy Sheldon Moore said that it was obvious to those in the Security Office “who was the holdouts” based upon what they could see on the video monitors. He recalls that at one time there were 3 holdouts and later there was just 1 holdout.

When it became obvious that the jury had a verdict, everyone began to leave the Security Office and head upstairs. ADA Gibbs told Deputy Sheldon Moore to wait until he gets a text from the bailiff to go get the defendant “because I don’t want to get into trouble”. (If Deputy Moore went to escort the defendant before the bailiff sends the text, then others will know that they were watching the jurors and knew a verdict had been reached.)

After the verdict was read that night, Deputy Sheldon Moore called Captain Zach Starkey, his superior, to report his concerns about the ADAs being in Security Office watching the jury deliberations. He “just didn’t feel in [his] gut that that was right, and [he] was just going to let him know. Starkey instructed [Deputy Moore] that he would let undersheriff, Jon Sappington, know immediately because it didn’t sound right to him either.” When Deputy Sheldon Moore did not hear anything more from his superior over the next few days, he approached Judge Russell on Wednesday, July 6, 2022 and shared what he knew with her. Judge Russell immediately involved Judge Pazzo . She assured him that he was doing the right thing to share his concerns.

F. Wayne Stinnett - Chief Investigator for the 12th District Attorney’s Office

Stinnett was contacted by DA Ballard to conduct an internal investigation into allegations of whether the ADAs assigned to the Kraft trial had observed the jury deliberations. *See OBA Ex 14*. He learned through talking with the deputies that Respondent spoke with Sgt. Clark (details of that conversation were unclear) and was given access by Sgt. Clark to the Security Office for the purpose of observing jury deliberations.

Stinnett determined from watching the video of the Security Office that Respondent was in that office observing the jury for a total of 132 minutes. It concerned him that the Respondent seemed to minimize the time he thought he was in the Security Office during the interview with Ballard/Thorp/Stinnett by estimating his time in the office at around 30 minutes.

During the time that Respondent could observe the jury as they were re-enacting the defendants self-defense claim by re-enacting the stabbing, voting and taking votes. He viewed some of the video of the jury, and found the picture quality to be very good, contrary to what Respondent said during the interview. Respondent told them that the video was “grainy” and that he could not really see anything (which was why he was only in the office for about 30 minutes.)

G. M.J. Denman – Defense attorney for Robert Kraft trial.

In the trial, Mr. Kraft received a guilty verdict on July 1, 2022. There is currently a motion for mistrial pending. In conjunction with the motion he had to file Motions to Produce to Judge Thomas (who was assigned after Judge Pazzo recused) to conduct his own discovery into this incident which costs his client. Mr. Kraft has not been

sentenced and remains in the Rogers County jail. The case is subject to a Motion for Mistrial and there is the possibility of a retrial as result.

Denman was notified about this incident by a phone call from Judge Pazzo on Thursday, July 7, 2022. At no time during the about 5 hours of deliberations did Respondent tell Mr. Denman or Judge Pazzo that he was observing the jury deliberations. When they were meeting with Judge Pazzo to consider the question by the jury about what would happen if there was a hung jury, Respondent did not mention that he was watching the jury and had an idea of what the vote was before Judge Pazzo sent the directive for the jury to keep deliberating. Importantly, Denman said that Respondent did not advocate on any response to the jury note and that Judge Pazzo gave the standard response – the Allen Charge.

Judge Pazzo set a status conference for July 14, 2022, to discuss the incident. First Assistant Joy Thorp and DA Matt Ballard appeared for the State at that status conference and acknowledged that the ADAs had observed the jury during deliberations and stated that the ADAs had been suspended from their duties.

Denman has since spent a considerable amount of time and effort (at his client's expense) to discover statements and interviews regarding the incident and the incident is the sole basis for the Motion for Mistrial. In his Motion, he argues that the ADAs committed a felony in violation of 21 O.S. §588, that the ADAs knowledge gained by observing the jury violated Kraft's rights to Due Process guaranteed by the 5th and 14th Amendments to the U.S. Constitution, that the ADAs violated Rule 8.4 and Rule 3.8 of the ORPC highlighting the special responsibilities that prosecutors

have as minister of justice above the duties as an advocate discussed in the Comments to Rule 3.8. and emphasizes that jury deliberations are categorically considered sacrosanct and the ADAs committed a “felony invasion” of the sanctity of the jury deliberations.

As a criminal attorney whose practice is focused in Title 21, he has been aware of §588. Mr. Denman is concerned about the impact this incident could have on jurors serving in the future. Will jurors be concerned about what they say or do in deliberations and wondering if they are being watched? Will jurors be concerned that something they say or do, or that their identities will be posted on the internet exposing them to scrutiny or threats depending on the case they serve?³

As to the suggestion that jury deliberations have long been observed or listened to in Tulsa County or other counties, Mr. Denman has never heard of or experienced that conduct during his years of practice. While doing his research for the Motion for Mistrial and talking with colleagues, he learned of a previous incident in Tulsa County involving Respondent that has similarities. He sought out the attorney he heard was involved in that incident, Brian Boenheim, and learned that Boenheim and Respondent had a heated confrontation about Respondents conduct in listening to jury deliberations in 2017. This incident is covered in the testimony of Mr. Boenheim below.

Mr. Denman concluded by advocating for juries and protecting their service:

³ Mr. Denman cited to headlines in the news on the very day he was testifying to the Panel regarding members of the grand jury that indicted former President Donald J. Trump in Fulton County, GA, receiving death threats after their personal information was shared online.

“ I am concerned that – we have an obligation. We as lawyers have an obligation, we have to make sure that the bedrock of the criminal justice system, the system that I practice in, has to work, that everybody has to do the right thing. We have an obligation to protect juries. We have an obligation to protect the men and women who aren’t working while they’re being jurors, who are closing their shops while they’re being jurors, who are finding daycare while they’re being jurors. We have an obligation to renew their trust. That’s my concern. I don’t know how you do it, but that’s my concern. When I’m asked by people does this happen all the time, when I’m asked by people, well, how are we going to know in the future that doesn’t happen, the only thing I can say is, because I’m asked, and I’ve Thought about it, the legislative branch said his is a felony. The executive branch said not that big of deal. The deferred prosecution agreement, it’s not that big of a deal. So now these men and women, these people, who sacrifice to be jurors, the only other reassurance they have that this won’t happen again has to come from the third branch, the judicial branch. They have to send a message that says we’re going to be so scared we’re never going to do this again.”

H. Brian Boeheim – Criminal Defense, Tulsa County

Boeheim has been acquainted with Respondent since he was a 1L and Respondent was a 3L at the University of Tulsa. They continued to cross paths professionally over the years, mostly in the criminal courts in Tulsa County where Respondent was a prosecutor and he represents criminal defendants.

Mr. Boeheim was subpoenaed by the OBA to appear before the PRT and testify regarding a particular incident he had with the Respondent in December 2017. (*See also OBA - Ex. 15, Affidavit of Brian Boeheim prepared to be used in Kraft’s Motion for Mistrial.*)

Boeheim described an incident that occurred in December 2017 in Judge Greenough’s Courtroom 413, a very small courtroom with a jury room that his shared with the adjacent Courtroom. Boeheim stated that while they were waiting on jury deliberations and he was talking with Respondent’s 2nd chair attorney in the courtroom, Respondent came to them and started sharing what he could overhear was

being discussed in the jury deliberation room. Boeheim told him that listening to the deliberations was unethical and to stop talking about what he heard. Respondent argued with him stating that he had seen judges listen outside jury deliberation rooms. He invited Boeheim to go to their judge if he thought he had done anything wrong.

When Respondent returned and again started sharing what he had heard of jury deliberations a second time with his 2nd Chair attorney, Boeheim again confronted him. Reportedly, their argument became so heated and loud that sheriff deputies came to the courtroom from the hall to intervene. Boeheim and Respondent backed away from each other and that was the end of the incident.

Based upon this incident in December 2017, Boeheim believes that Respondent was put on notice, if he did not know it before, that any kind of monitoring of the jury's deliberations is wrong and unethical. He believes that the culture in the prosecutor's office at that time was to win at all costs, and that combined with Respondent's military training to "search and destroy", resulted in Respondent not being willing to recognize the impropriety of his actions and appreciate in that moment the sanctity of the jury's deliberations. He hoped that his confronting Respondent caused him to pause and think about the ethics going forward since he may not be getting that type of guidance from his prosecutor colleagues.

Outside of this incident, Boeheim spoke very complimentary of Respondent and his effectiveness in the "nasty business" of dealing with criminals. Boeheim expressed a great deal of respect for Respondent's enthusiasm and passion in working

on the very difficult “gangs and guns unit” to protect the citizens of Tulsa from people that needed to be off the streets.

On cross examination, Mr. Boeheim was confronted with why he did not report Respondent’s ethical breach as required by the Rules of Professional Conduct. He stated that in hindsight, he probably should have made a report, but that he hoped that confronting Respondent solved the issue without causing harm to the career of this talented prosecutor. On cross-examination, it was suggested that the December 2017 incident never occurred but that he was coming forward only to harm the career of Respondent whom he could never beat at trial.

I. Matt Ballard, DA for 12th Prosecutorial District, State of Oklahoma –

Ballard sought out and hired Respondent in November 2018 because he was a rising talent in Tulsa County. Respondent was hired as his Chief of Criminal Prosecution who oversaw all of the criminal prosecutors by supervising and training them and also handled the most significant criminal cases.

Ballard was first contacted about this incident when Judge Pazzo texted him and First Assistant Joy Thorp on Thursday, July 7, 2022. Judge Pazzo pulled them from a meeting because he needed to discuss something urgent. Ballard and Thorp met that morning with Judge Pazzo and Judge Russell and learned of the allegations that two of his ADA’s had observed the jury during deliberations in the Kraft case on that previous Friday evening. His immediate reaction to hearing about the incident was: “I was in shock. I mean, my heart sank.” Ballard immediately recognized the significance of the issue and initiated an internal investigation that day utilizing his

chief investigator, Wayne Stinnett. Because Respondent was on vacation that week, they waited until Monday, July 11, to interview him and ADA Gibbs. Both readily admitted that they had observed the jury deliberations on Friday, July 1, 2022. Respondent said that he did not see any ethical problem with observing the jury because he did not communicate with or otherwise interfere with their deliberations. He stated he had seen similar behavior when he worked in Tulsa County.

Ballard texted the ADAs during deliberations on July 1, 2022, around 6:30p and asked: "So I heard you got some question about transcripts or something. Any other indication what the jury is thinking?" ADA Gibbs responded: "I think we got a holdout." And Respondent texted back at 6:36p: "We got a live one." At no time did Respondent or Gibbs communicate that they were or had been actually observing the jury deliberations from the Security Office or the basis for believing there was a "holdout" or a "live one".

Ballard testified that Respondent explained during the investigative interview that he was in the Security Office because courthouse security was concerned about defendant's family members were in the vicinity of the courtroom where the jurors were deliberating. Ballard had not heard of jurors deliberating in a courtroom instead of jury deliberation room before. Based upon the investigation interviews, he does not believe that courthouse security asked for Respondent to become involved in any concerns about the defendant's family.

Ballard was concerned that the Respondent did not seem to immediately recognize the ethical issue involved. Ballard discussed the potential fundamental

unfairness that results when a prosecutor has information that the defense attorney does not have access to. When he presented a copy of 21 O.S. §588 to the Respondent, his demeanor totally changed and he appeared very upset. He even offered to resign on the spot. Respondent was informed that he was being suspended with pay while they complete their investigation. Ultimately, Respondent resigned in lieu of being terminated from the Rogers County DA's office. That completed their internal investigation/action. Because of the criminal statute component, the criminal investigation was turned over to the OSBI and Brian Hermanson, DA for District 8, State of Oklahoma.

This incident has caused a major distraction in Ballard's office. He believes it has given the criminal justice system at "black eye" and has undermined some of the faith and reputation of fairness that prosecutors work hard to earn and build locally and beyond as result of national press coverage. Additionally, he personally met the family of the murder victim in the Kraft case and explained how the incident may put the conviction at risk and assured them that his office would fight to uphold the verdict. Ballard also expressed concerns for the impact this incident could have on how citizens feel about serving on a jury.

Ballard had developed a close personal and professional relationship with the Respondent and considers this incident and its implications one of the more difficult things he has had to deal with his career. He is upset that such a talented prosecutor who has also excelled in doing the right thing and has remained dedicated to his military service has found himself in this situation.

On cross examination and as a designated character witness for the Respondent, Ballard recounted a few examples of instances when he observed Respondent exercise exemplary ethical conduct as a prosecutor. Other than this incident, he holds Respondent in very high esteem. Ballard believes he is a talented prosecutor and will be an asset at his current position as a prosecutor in Creek County. But, because of this incident, Respondent will never be eligible to work as a prosecutor in Rogers County under DA Ballard.

Ballard admitted that he was also unaware of 20 O.S. §588 making it a felony violation of the law. But he had no pause in his appreciation that it is wrong to watch jury deliberations and that it is unethical. He believes that the Respondent made a mistake and should be held accountable, but believes that losing his job in Rogers County, going through the OSBI investigation resulting in a DPA, and going through the process with the OBA has held him accountable. Ultimately, he believes “the system” is better with Respondent practicing law.

J. Mary Leavell, Esq. – friend and colleague of Respondent

Ms. Leavell first met Respondent when she was an extern and he was team captain for the DA’s gang unit in Tulsa County. She looked up to him as a seasoned, prominent prosecutor. Ms. Leavell recalls Respondent getting the Top Gun Award because he was trying more cases than anyone. She was happy to move from Tulsa and Osage County to Rogers County in 2022 to join Respondent’s team where he was Chief of Criminal.

Ms. Leavell does not have any personal knowledge of the incident at issue but just generally understands that Respondent observed the jury deliberations via video feed from the courtroom to the Security Office. Her view is that there were unusual circumstances related to COVID precautions and that Respondent made a mistake in judgment as did the judge for putting the jurors in a courtroom to deliberate. Though, is aware of a judge in Osage County that also placed jurors in a courtroom to deliberate during COVID. She is unaware of anyone attempting to observe the jury deliberations in Osage County.

Before this incident, she was unaware of 21 O.S. §588 or that observing a jury was a criminal offense. However, Ms. Leavell agrees that Respondent committed a felony upon her interpretation of 21 O.S. §588. And she agrees that an ADA is not just an advocate for its client, but is a minister of justice first. She agreed that an ADA watching a jury deliberate is unfair to the defendant and to the process overall.

She agrees that the incident damages the reputation of lawyers and the judicial system. When this incident was portrayed in the news media, she was at the District Attorneys Council Conference and it was a hot topic of discussion. She described the reaction of the attorneys attending as embarrassment, shock, and outrage. Also, the majority of attendees discussed the fact that they were not aware of 21 O.S. §588 making it a criminal felony to observe jury deliberations. Even so, no prosecutors she spoke with expressed that they perceived it to be acceptable to observe a jury during

deliberations so long as there is no interference with the deliberations. And, no prosecutors commented that this type of conduct happens in their courthouses.⁴

Leavell testified that she is aware the Isaac volunteers with different Veterans organizations and represents veterans in need of legal services. His military experience is a significant part of who he is as his service in the Marines took him the Middle East and he received a Bronze star for valor. She served in the Air Force and their respective service in the military is a meaningful bond they share. It has been Leavell's observation that Respondent is dedicated to doing the right thing both in his military career and as a prosecutor. She has no doubt that Respondent did not realize the significance of his actions in observing the jury, and that had he realized it he never would have done it. From her observation since this incident, she has observed the loss that Respondent has experienced in that he lost a job he loved in Rogers County, he has been greatly humbled by his ignorance of the situation, and he is pained by the trouble his ignorance has caused others.

K. David Max Cook, District Attorney for Creek County

DA Cook has been practicing law at the Creek County DA's office for 35 years and is the currently elected DA. He recently hired Respondent to serve as an ADA in Creek County. He had heard about the incident in the news and researched the situation before hiring Respondent in March 2023. He perceived that Respondent was very candid about the incident during his interview for the job. Based upon what

⁴ After this incident she performed some research and learned that a judge, prosecutors and defense counsel were reported in a similar incident in 2021.

Respondent told him, he was asked into the Security Office to assist the sheriff's deputies with a situation, and so Cook stated that Respondent was arguably "entrapped" into breaking the law.

When asked if Respondent expressed regret for his actions, DA Cook said "... well not exactly. He tells me that he now regrets them because he didn't know of the statute." DA Cook says that ever lawyer and judge he has discussed this with, about 10-15 or so, were unaware of 21 O.S. §588. He expressed his concern as "we wouldn't put a camera in a jury room, but we had a judge put a jury in a camera room" in this instance. Also, all the deputies in the Security Office were not held accountable though they were involved in the same acts. Finally, believes the statute "needs some work".

DA Cook has never watched or listened to a jury deliberate because "we know that the jury room is pretty much sacrosanct." He agrees that knowingly watching or listening to a jury is improper, unethical, and now understands it is felony.

DA Cook is impressed with and very complimentary of Respondent's work in the in his first 5 months in Creek County. It is his opinion that this incident makes Respondent value his license to practice law even more and that the experience has instilled a higher respect for his duties to the profession and to the public. As a prosecutor, attorneys deal with things rapid fire and you have to make split second decisions. He seemed to suggest that no one is above making a mistake especially in such a demanding environment. When asked whether he felt that Respondent should have his license suspended regarding this incident, DA Cook stated that suspension

for something he did not realize was wrong sounded harsh to him. He also testified that Respondent is remorseful about violating the statute that no one seems to know existed.

L. Cheyenne Lee - Firefighter and personal friend to Respondent.

Mr. Lee first met Respondent while he was working at Rogers County Sheriff's Office as a patrol deputy and then became a sergeant in investigations. Respondent was a good resource to Mr. Lee and others in the Sheriff's Office. Respondent's reputation was as "a very, very aggressive prosecutor" and "a pit bull". He was passionate about his job and well respected.

Lee was not present during the incident subject of this proceeding but he was in contact with Respondent weekly as his friend. He observed that Respondent was very upset by what happened and blamed himself. He felt that his actions resulted in ADA Gibbs and possibly others getting in significant trouble in their jobs. Respondent became almost reclusive as the investigations started and he had several people seemingly turn their backs or at minimum distance themselves from him. He was worried about Respondent and checked on him frequently. There were many conversations in which Respondent cried about how much he had let everyone down. Watching the fallout that has come upon his friend has been difficult, especially knowing how dedicated Respondent has been serving as a prosecutor, serving as Marine lieutenant leading and losing guys in combat overseas, becoming a colonel in the Oklahoma National Guard and stepping up during the rioting and looting in Tulsa

a couple of years ago. According to Mr. Lee, Respondent has never hesitated to serve his community or his country because it is who he is.

M. Isaac Seth Brantley Shields – Respondent

Respondent's military experience started in the ROTC. After 9/11, Respondent was deployed to Baghdad for 18 months with the 1st Cavalry Division. Upon return he attended more "Army Schools" and then was sent to New Orleans to cover the aftermath of Hurricane Katrina. After Katrina, he was deployed back to Iraq. By the age of 25, he had been to about 30 different countries in the military. Respondent was a captain in the Army and entered law school at the University of Tulsa after his last tour in Iraq. He remains in the National Guard and has participated in about a dozen missions to respond to ice storms, flood, tornadoes and hurricanes. He also volunteers at the VFW and helps veterans there when he can with getting disability benefits or other needed services. He feels a camaraderie with vets who have had similar experiences and shared values.

During law school, Respondent initially interned at the U.S. Attorney's office and the encouraged him to apply at the DA's office in Tulsa County. He was licensed in 2013 and was hired as a full time prosecutor. After about 2 years in the misdemeanor and felony division, he was elevated to the gang unit. There he rose up the ranks to team captain of the gang unit which typically involved hyper violent crimes, high drug crimes and some organized crimes or conspiracy crimes. He also was teaching courses to law enforcement and other prosecutors across the state on various topics.

In 2018, Matt Ballard, the DA for District 12 recruited him to join their team. He worked as the Chief of Criminal for District 12 from 2018 until July 2022 when these events occurred. Since the events of July 2022, Respondent worked at a family law firm in Tulsa until he was approached by the First Assistant DA of Creek County and returned to being a criminal prosecutor in March 2023. He is drawn to the work of a prosecutor because he sees opportunity to make a real impact on individuals and communities. He loves being around the law enforcement community as well. Through his dedication, awards naturally followed in the form of Top Gun Award in Tulsa County for trying the most cases, recognition from the Gang Investigators Association, the Oklahoma Association of Narcotics Enforcers, Rogers County Prosecutor of the Year, and being asked to be a guest speak at the District Attorney's Council several times.

Getting to the issue before us, Respondent set the stage with a description of Kraft trial as it came to an end just before the July 4th holiday and the plans he had to take his mother, who was declining with dementia, on a much needed vacation to Gulf Shores, AL. The jury went out in the late afternoon of Friday, July 1, around 3:00. Respondent is unwaivering that Sgt. Mike Clark asked "Hey, can you come take a look" at the video monitor in the Security Office to view a security concern about the family of the defendant. He was asked what they should do about the Kraft family members wandering around the courthouse halls. He told the deputies that is was up to them how to handle security, but if they removed them from the courthouse, "it would be bad for them to not let them back in the courthouse whenever there's a verdict." Once he was in the security room and saw the jurors in the courtroom, he

admits that he was curious of what was taking them so long. So he stayed and watched. He contends he had no idea that it was unethical and that he was not trying to cheat. He was just waiting for the outcome because to him the trial was over and he had nothing else to do while they waited.

On cross-examination regarding this timeframe, Ms. Hendryx read the initial answer that Respondent gave in the interview with Ballard/Thorp/Stinnett on Monday, July 11, 2022, and how his initial response about why he was in the room did not include anything about being asked to help out with a security issue involving the defendant's family. Instead it focused on Sgt. Moore commenting to you that the jury looked to be wrapping up and readying to return a verdict. Ms. Hendryx emphasized that even if what Respondent says is true regarding how he first went into the Security Office, he returned over and over without any alleged invitation. Ms. Hendryx also highlighted that during the first interview he seemed to try to deflect what he did by stating that Judge Greenough in Tulsa County had shared with him the experiences of listening to juries deliberate from outside the jury room door.

After ADA Gibbs texted to let him know that his fiancé had arrived with pizza, he told ADA Gibbs, "Hey, come over to the Security Office" before they went upstairs to eat pizza. ADA Gibbs entered the Security Office and they watched the jurors appear to re-enact how the defendant claimed he ended up stabbing the victim in self-defense.

When the jury reached a verdict he received text messages from the bailiff, and they left the Security Office to go upstairs to the courtroom. He did not know what the verdict was from his observing the jury.

After the verdict was read and the jurors were excused, he hung around and spoke with a few of the jurors along with ADA Gibbs and the 2nd chair defense attorney. He left the next morning to pick up his mom and meet his family to spend a week at Gulf Shores.

Upon his return on Monday, July 11, 2022, he was getting ready to head over to a preliminary hearing in Mayes County when either Joy Thorp or Matt Ballard asked him to meet with them and Wayne Stinnett. He sat down with them and Matt Ballard asked if he had watched the Kraft jurors on a monitor in the Security Office to which he said "yes". Ballard asked if he does not see that that is a problem. Respondent said he did not see any problem because he did not communicate with or tamper with the jurors.

Then Ballard presented him with a copy of 21 O.S. §588, "and it was like the whole world cracked underneath me." His memory of the specific conversation at that point is unclear because he "literally felt like the world just got flipped upside down." In that moment, he realized that this conversation was an interview and was being recorded, he realized that he was being suspended, and he realized that he may have broken a law that he did not know existed. As he was leaving, they told him that they would be talking to ADA Gibbs next. Respondent told them "George only came to that office because I asked him to be down there."

As the seriousness of the situation was sinking in, he retained legal counsel and was advised that it would be best to advise the OBA of the situation. So, a self-report letter was sent to the OBA on Wednesday, July 13, 2022. He cooperated and met with Ms. Hendryx and Mr. Martin, the OBA investigator in Oklahoma City.

He was informed that there would also be an OSBI investigation given the potential violation of the criminal statute. He fully cooperated in the OSBI investigation. He worried that he might be arrested at the conclusion of that interview because he fully admitted to what had happened. He was relieved he was not arrested.

Over the next several weeks he waited to hear if he was going to be charged and the media coverage of the incident peaked. He was tired of seeing his face in the news. He did not talk to anyone but his attorneys. He spent his days refreshing the OSCN website to see if charges were filed. And, he received some texts from defense attorneys that were excited that something bad was happening to him. It was the worst 5 weeks of his life.

He was very relieved to when he learned that DA Hermanson was declining charges but as offering a Deferred Prosecution Agreement. He signed the DPA because it was the only option to avoid felony charges that would have certainly ended his military career. Today he still views the DPA as a good outcome because he was forthcoming about he had done. The terms of the DPA are paying a fine, 3 years' probation, 80 hours of community service, 7 hours of ethics CLE and to not break any laws. He has already completed most of the terms.

As for the incident that Tulsa attorney, Brian Boeheim, testified happened in December 2017 and involved Respondent listening to a jury deliberating in Judge Greenough's jury room, Respondent categorically denies it happened and that it is all fabricated. Respondent contends that Brian Boeheim dislikes him so much that he testified for the singular purpose to see him get reprimanded. Respondent said that there are a number of defense attorneys that are excited to see him get in trouble. Actually, many consider him arrogant, pompous and heavy-handed.

Respondent testified on direct exam that he has had no "previous" disciplinary issues. Likewise, he has had no complaints except the standard complaints that prosecutors and judges get from families whose loved ones are convicted. All of those have been dismissed. On cross-examination, Ms. Hendryx confirmed that Respondent has waived confidentiality about grievances – and that he has a pending grievance that was filed after this Complaint. That matter involves allegations of withholding evidence from the defense in a case.

Respondent contends that at no time did the jury know they were being watched, and at no time did he communicate with or interfere with the jurors' deliberations. From his education, training and experience at that time, he understood that there is a strict prohibition against interfering, talking to, or communicating with a jury, but he never considered that merely observing the jurors was an issue. He absolutely had no idea that observing a jury in deliberations was a crime and was not aware of 21 O.S. §588. Even so, he testified with great remorse, that this was "horrible, horrible, horrible decision" on his part and that he "absolutely should have

known better". And that more than for himself, he regrets that he involved ADA Gibbs and involved him.

II. TRIAL PANEL FINDINGS AND ANALYSIS OF LAW

Count I: Professional Misconduct in violation of ORPC Rules 8.4(c) and 8.4(d) and RGDP Rule 1.3

The OBA has alleged that Respondent violated the following:
Title 5, Ch. 1, App. 3-A, Maintaining the Integrity of the Profession
Rule 8.4 - **Misconduct**

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

Based upon the record in this matter, the PRT finds that while there are strong inferences that Respondent may have been dishonest or made misrepresentations in one or more interviews following the events on July 1, 2022, the evidence presented did not rise to the level of clear and convincing. There is certainly evidence that Respondent may have been less than candid or omitted telling others that he was observing the jury deliberations on July 1, 2022. Actually, Respondent admits that he should have been more candid in hindsight. The argument by the OBA is that Respondent was not candid and did not mention to anyone (the judge, the First Asst. or the DA or opposing counsel) that he was observing the jury for the reason that he knew his conduct was wrong and he was being deceitful through his omissions. But, the weight of the evidence in this record of dishonesty, fraud, deceit or misrepresentation does not rise to the level of clear and convincing in the view of the PRT.

However, the PRT does believe that there is clear and convincing evidence in this record that Respondent engaged in actions that are prejudicial to the administration of justice. Further, Respondent and every attorney witness that testified agreed that the act of observing a jury during deliberations is unethical, unfair, an invasion of the sanctity of the jury, and illegal.

Additionally, the OBA alleges that Respondent violated the standards of conduct expected of a lawyer as outlined below:

Title 5, Ch. 1, App. 1-A, Art 1, Rule 1.3. Discipline for Act Contrary to Prescribe Standards of Conduct.

The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

It is the position of the PRT that there exists clear and convincing evidence that Respondent acted contrary to prescribe standards of conduct for a lawyer which has cast reason for criminal defendants, their counsel, jurors, judges, and the public as a whole, to question the sanctity of jury deliberations and jury service and the trust that can be placed with prosecutors who are required to be ministers of justice for everyone before they are client advocates. Unfortunately, this incident was discussed widely among prosecutors gathered at the state DAC meeting, aired on local TV news, published in national print/online news, and posted on YouTube.

Count II: Violation of 21 O.S. §588

Title 21, Ch. 19, Section 588 provides:

If any person, firm or corporation shall knowingly and willfully, by means of any device whatsoever, records or attempts to record the proceedings of any

grand or petit jury in any court of the State of Oklahoma while such jury is deliberating or voting or listens to or observes, or attempts to listen to or observe, the proceedings of any grand or petit jury of which he is not a member in any court of the State of Oklahoma while such jury is deliberating or voting shall be guilty of a felony and shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than two (2) years, or both. Provided, however, that nothing in this section shall be construed to prohibit the taking of notes by a grand juror in any court of the State of Oklahoma in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.

At the hearing, Respondent admitted to a violation of this statute as it is written in his Answer to the Complaint by the OBA, in the deferred prosecution agreement entered with the State of Oklahoma following the OSBI investigation, and in these proceedings. Therefore, the PRT finds there to be clear and convincing evidence, by Respondent's admission and through testimony of the witnesses, that Respondent violated 21 O.S. §588.

Mitigation:

The PRT identified several items to consider as mitigation:

1. Respondent never denied that he observed jury deliberations on July 1, 2022;
2. Respondent submitted a self-report to the OBA dated July 13, 2022 and cooperated in the investigation. He was described by the investigator, Mr. Martin, as being candid and honest during their interview;
3. Respondent cooperated in the OSBI investigation and entered into a Deferred Prosecution Agreement that admitted his violation of 21 O.S. §588. The DPA states that it was offered in lieu of prosecution "in consideration of lack of intent to violate the law". Respondent has been diligent thus far in completing the terms of the DPA;
4. Respondent voluntarily entered into an agreement with Lawyers Helping Lawyers, has secured a sponsor, and candidly says it has been beneficial;

5. All attorneys that testified, except one, was not aware of 21 O.S. § 588.^{5 6}
6. Respondent's service to his country through the military, to his State as an officer in the Oklahoma National Guard and to his community as a prosecutor;
7. Respondent's volunteer service to veterans in the State of Oklahoma.

Recommendation -

The PRT could not find any reported cases that dealt with the central issue or any sufficiently similar. This make it a challenge to recommend discipline that is consistent with that that has been imposed on other practitioners for similar acts of misconduct. *State ex rel. Okla. Bar Ass'n v. Giger, 2003 OK 61 at ¶33.*

We are mindful that the license to practice law is not conferred for the benefit of the individual licensee, but rather for that of the public. *State ex rel. Okla. Bar Ass'n v. Giger, at ¶33.* And, that discipline is administered to preserve public confidence in the bar. Discipline is not to punish but to inquire into and gauge a lawyer's continued fitness to practice law, with a view to safeguarding the interests of the public. *State ex rel. Okla. Bar Ass'n v. Phillips III, 2002 OK 86, ¶21; State ex rel. Okla. Bar Ass'n v. English, 1993 OK 68, ¶12, State ex rel. Okla. Bar Ass'n v. Raskin, 1982 OK 39, ¶17.*

Witness, Mary Leavell, Esq., testified that since the occurrence of the events before us, she researched to find any similar events and referenced a Texas judge that found herself in a similar situation after she and counsel for both parties watched

⁵ Given that there appears to be widespread lack on awareness of 21 O.S. § 588, the PRT would suggest the OBA or the DAC consider including education to members of the Bar on this statute, related ethics and the sanctity of deliberations.

⁶ To be complete, all attorneys that appeared before the PRT for these proceedings were keenly aware of the sanctity of jury deliberations and that it is unethical to listen to or observe jury deliberations.

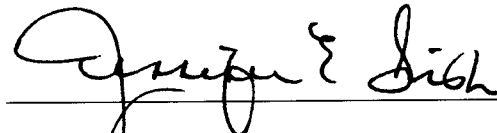
deliberations in her courtroom in 2021. In drafting this report, the PRT took to Google and found the incident referenced by Ms. Leavell. Indeed, this incident triggered an investigation by the Texas State Commission on Judicial Conduct. The Commission ultimately voted to dismiss the complaints based on the corrective actions she took to address the concerns surrounding the recording of jury deliberations. CJC Nos. 22—417 and 22-0420 (The Commission seemed to focus on the recording of deliberations, not the actions of the judge [or the attorneys] that decided to observe the deliberations.) It is understood that since July 1, 2022, no judge in Rogers County has placed a jury in a camera room (courtroom) for deliberations. All jury deliberations have returned to the rooms intended for jury deliberations with no cameras.

Based on the analysis of the evidence and case law presented herein, the Panel recommends that this Court issue a PUBLIC CENSURE and that Respondent be assessed with the costs of this action.

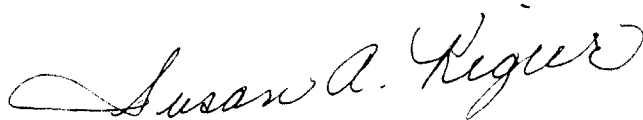
Dated this 16th day of October, 2023.



Malinda S. Matlock, PRESIDING MASTER



Jennifer Irish, LAWYER MEMBER



Susan Regier, LAY MEMBER

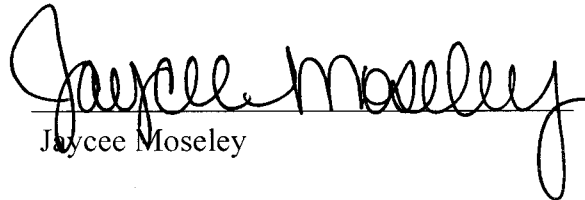
CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of October, 2023, at the direction of the Presiding Master of the Professional Responsibility Tribunal, service of a true and correct copy of the foregoing document was made by electronic mail on:

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ATTORNEY FOR COMPLAINANT

And via email and first-class, postage prepaid, mail to:

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ATTORNEY FOR RESPONDENT SHIELDS


Joyce Moseley